

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE**

**TENTATIVE RULINGS - May 25, 2007**

EVENT DATE: 05/29/2007                      EVENT TIME: 10:00:00 AM                      DEPT.: C-71  
JUDICIAL OFFICER: Ronald S. Prager

CASE NO.: JCCP4041  
CASE TITLE: JCCP4041 COORDINATION PROCEEDING TOBACCO LITIGATION

CASE CATEGORY: Civil - Unlimited                      CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)  
CAUSAL DOCUMENT/DATE FILED: Motion to Strike, 04/11/2007

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The Court rules on plaintiff/cross-defendant People of the State of California's ("People") motion to strike demand for jury trial as follows:

The motion is denied for the reasons stated below. In *Hodge v. Super. Ct.* (2006) 145 Cal.App.4th 278, 283, the court stated that "[a] jury trial must be granted where the gist of the action is legal, where the action in reality is in reality cognizable at law. Contrary to the People's representations, U.S. Smokeless Tobacco Co. ("USSTC") correctly argued that the People do not seek true declarations of the construction and effect of the Smokeless Tobacco Master Settlement Agreement ("STMSA") or the Consent Decree but instead seeks adjudications on the merits of the form of findings and declarations that USSTC breached various provisions of the STMSA and Consent Decree. For example, in the prayer of the Second Amended/Supplemented Complaint for Enforcement of the Smokeless Tobacco Consent Decree and STMSA, the People repeatedly ask the Court to find that USSTC violated STMSA. Where, as here, a party proceeds by declaratory relief in lieu of an action at law for breach of contract, a party is entitled to a jury trial as a matter of right. (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 25-26; *See also Allstate Ins. Co. v. Normandie Club* (1963) 221 Cal.App.2d 103, 105-106.) Furthermore, the People's contention that this action is akin to an action for specific performance is undercut by the fact that it is requesting monetary damages and civil penalties.

IT IS SO ORDERED.